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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWA]
 LANZIE CARROLL HORTON, JR.,) Docket No. 12-0052
 an individual, also known as JUNIOR)
 HORTON, doing business as)
 HORTON'S PUPS,)
)
 Respondent) **Decision and Order**

Appearances:

Colleen A. Carroll, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, D.C., for the Complainant, who is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS); and

Thomas D. White, Esq., 209 N. Washington Street, Millersburg, OH, for the Respondent, who is Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups (Respondent Horton).

1. This Decision and Order GRANTS in part and DENIES in part APHIS's Motion for Summary Judgment (filed June 4, 2012).
2. The Complaint was filed on November 7, 2011, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS" or "Complainant"). The Complaint alleged that the Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups ("Respondent Horton" or "Respondent") willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) ("AWA" or "Act"), and a regulation issued pursuant to the Act (9 C.F.R. § 2.1(a)(1)).

3. The Answer, timely filed on November 28, 2011, requested a hearing and denied, among other things, any willful or knowing violation of the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*).

4. APHIS's Motion for Summary Judgment (filed June 4, 2012), when compared with the Complaint, compared with the Answer, and compared with Respondent's Memorandum in Opposition (filed July 24, 2012), leads me to the following Mixed Findings of Fact and Conclusions of Law, which do **not** require the admission into evidence of testimony or exhibits.

Mixed Findings of Fact and Conclusions of Law

5. Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, is an individual whose business was in Millersburg, Ohio, and was previously in Hillsdale, Virginia.

6. On or about November 9, 2006, through September 27, 2007, Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, without having obtained a dealer's license under the Animal Welfare Act from the Secretary of Agriculture, in commerce, for compensation or profit, delivered for transportation, or transported, or sold, or negotiated the sale of, **914 dogs** for use as pets **to a retail pet store**, Pauley's Pups, in violation of section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1).

[See paragraphs 3.a. through 3.qq. of the Complaint, pages 2 through 8.]

7. On or about June 8, 2008, Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, without having obtained a dealer's license

under the Animal Welfare Act from the Secretary of Agriculture, in commerce, for compensation or profit, delivered for transportation, or transported, or sold, or negotiated the sale of, **42 dogs** for use as pets **to** a licensed **dealer**, Ervin Raber, in violation of section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1). [See paragraph 3.rr. of the Complaint, page 8.]

8. On or about December 27, 2008, through January 17, 2009, Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, without having obtained a dealer's license under the Animal Welfare Act from the Secretary of Agriculture, in commerce, for compensation or profit, delivered for transportation, or transported, or sold, or negotiated the sale of, **two dogs** for use as pets **to** a licensed **dealer**, Harold Neuhart, in violation of section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1). [See paragraph 3.ss. of the Complaint, page 8.]

9. On or about September 30, 2009, Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, without having obtained a dealer's license under the Animal Welfare Act from the Secretary of Agriculture, in commerce, for compensation or profit, delivered for transportation, or transported, or sold, or negotiated the sale of, **four dogs** for use as pets **to** an unlicensed **dealer**, Pamela Knuckolls-Chappell, in violation of section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1). [See paragraph 3.tt. of the Complaint, page 8.]

10. APHIS claims that Respondent Horton's violations (paragraphs 6, 7, 8 & 9) were "willful"; Respondent Horton claims that if they were violations, they were not "willful"

and were not even “knowing”. For the purpose of this Decision, I make no determination of Respondent Horton’s scienter, concluding that no such determination is required for me under 7 U.S.C. § 2149(b) to order Respondent Horton to cease and desist from violating the Animal Welfare Act; and to order Respondent Horton to pay civil penalties.

11. The maximum civil penalty for violations occurring from June 23, 2005 through June 17, 2008, was \$3,750.¹ Since June 18, 2008, the maximum civil penalty for a violation has been \$10,000.²

12. The factors regarding the appropriateness of a penalty under 7 U.S.C. § 2149(b) include size of the business, gravity of the violations, whether there is good faith, and the history of previous violations. Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton’s Pups, operated a large business while in Virginia and operated a small business while in Ohio. The gravity of the violations, each of which is the sale of a dog by an unlicensed dealer, is serious, especially since there were 962 violations (914 in less than a year, ending September 2007; thereafter, the remaining 48 violations over roughly 16 months ending September 2009). Beginning on November 8, 2007 Respondent Horton failed to show good faith, in that he did not attempt to become licensed under the Animal Welfare Act [query, would he have been accepted as a licensee?], and he showed disregard for whether his sales activities were permissible while he had no AWA license.

1. 28 U.S.C. § 2461; 70 Fed. Reg. 29575 (May 24, 2005)(final rule effective June 23, 2005); 7 C.F.R. § 3.91(b)(2)(ii) (“Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$3,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.”).

2. 7 U.S.C. § 2149(b).

Respondent Horton does not have a history of previous violations [and, for the purpose of this Decision, I GRANT Respondent Horton's Motion to Exclude Evidence (filed June 25, 2012), and I accept as true Respondent Horton's assertion that since November 2008, when he received his warning from an APHIS officer, he ceased any of the actions that may have been violative of the Act].

Order

13. The following **cease and desist** provisions of this Order (paragraph 14) shall be effective on the day after this Decision becomes final. [See paragraph 17.]
14. Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from operating as a dealer without having obtained a dealer's license under the Animal Welfare Act from the Secretary of Agriculture, in violation of section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1).
15. Respondent Lanzie Carroll Horton, Jr., also known as Junior Horton, doing business as Horton's Pups, is assessed civil penalties totaling **\$14,430**; which he shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States**," within one year after this Decision becomes final. [See paragraph 17.]
16. Respondent Horton shall reference **AWA 12-0052** on his certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties shall be sent to, and received by, Colleen A. Carroll, at the following address, or at any other address specified by Colleen

A. Carroll:

US Department of Agriculture
Office of the General Counsel
Attn: Colleen A. Carroll
South Building, Room 2325B, Stop 1417
1400 Independence Ave SW
Washington DC 20250-1417

Finality

17. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 2nd day of January 2013



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
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Washington, D.C. 20250-9203
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